

August 11, 2014; Understand all of Your Legal Rights

Part of a family law attorney's job is to help clients see beyond their emotional barriers and to focus on reaching a fair resolution. Today, let's consider how you can best prepare for negotiations to settle a divorce case.

Like any other aspect of law, being prepared is the key. With the help of your attorney, you need to do your homework.

First on the list is getting control of your emotions. This is where your "dream team" members play an important role. In an earlier column, I suggested that clients facing a divorce assemble together a team to help them through the challenging process. At a minimum, this team should include a family law attorney, supporting friends and family, and a marriage or family counselor.

You should work with your counselor on developing ways to overcome such feelings as sadness, isolation, anger, hatred, and revenge. Lean on friends and family for positive emotional support. Find people and activities to help bring some joy and laughter into your daily routine.

You next need to understand your legal rights on such matters as the distribution of property and debts, custody of children, and support for children and spouses. After all, you can't reach a fair settlement if you don't understand what is considered fair under the law.

Discuss these matters with your attorney and together develop a negotiation strategy. Following are some of the basic legal principles applicable to these matters. We'll discuss each of these in much greater detail in future installments.

When it comes to splitting property between a divorcing couple, Guam follows a "community property" approach - all property acquired and accumulated by the parties from the time of the marriage to the date of separation is equally owned by both the husband and wife. Community property also includes items titled under only one spouse's name. For example, if a wife purchases a car during the marriage, but only puts her name on the title, the vehicle is still considered community property.

If the divorce goes to trial, under Guam law the judge must equally divide the property and debts between the parties. There are some exceptions to this rule that we will discuss in a future article. Of course, neither party may like the way a judge divides the property and debts. For this reason, the couple should strive to settle the matter themselves.

On the matter of custody, parents should be aware that there are two types of custody, legal and physical. Legal custody has to do with the ability to make decisions relating to a child's health, education and welfare. This includes such

matters as choosing the child's religion, school, as well as authorizing medical treatment. Physical custody refers to the time a child is in the physical care, control, and supervision of a particular parent.

Under Guam law, unless there are very unusual circumstances, the preference is to award both parents joint legal and joint physical custody. This is especially true when both parents continue to live on Guam.

With joint legal custody each parent must consult the other when making major decisions concerning their child's health, education and welfare. When joint physical custody is ordered, the child will spend more or less equal time between the households. The most common arrangement is for parents to exchange the child every week, often on Fridays or Mondays.

Some Guam judges, when confronted with the matter of custody, will automatically order joint legal and joint physical custody unless either party can immediately prove the other parent is unfit. This is a difficult burden of proof. Gone are the days when a mother is automatically given sole legal and physical custody of the children.

Research has proven that children do much better after a divorce when they maintain close contact with both parents. Of course, if the parents voluntarily agree to a custodial arrangement other than joint legal and physical custody, the judge will most likely accept the parents' agreement.

For the most part, child support is determined by applying the Guam Child Support Guidelines. Basically, child support is a formula. The amount of support depends upon the physical custodial arrangement between the parents, how much each parent earns, the number of children involved, their educational costs, and any special needs a child may have.

The Child Support Division of the Attorney General's Office can assist parents in determining the appropriate amount of support and in enforcing a child support order. The office recently moved to the ITC Building in Tamuning. You can call them 475-3360 or visit their website at "www.guamcse.net."

When it comes to awarding spousal support, also known as alimony, judges have considerable discretion. In exercising this discretion, a judge must base the decision on a spouse's need and the unique facts of each case.

In deciding whether to award spousal support, judges consider such factors as the parties' educational level, work experience, and current earnings. The judge cannot use spousal support as a form of punishment. If a judge determines that spousal support is appropriate, unlike child support, there is no set formula to determine the amount of support or its duration. Such a decision is based on the unique facts of each case.

Once you've met with your attorney and have a basic understanding of your legal rights as they apply to dividing community property and debts, determining custody, and assessing support, you are ready to start negotiating with your spouse on the fair terms of a settlement. In the next column we'll discuss an approach to reaching an agreement that is rapidly growing in popularity - mediation.